

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, DISTRICT COURT
(Greenbelt Division) DISTRICT OF MARYLAND

2009 MAR -6 A 11:48

LINDA RAYE

Plaintiff

CLERK'S OFFICE
ST. GEORGE

v.

Civil Action No. RWT 08-2636

C.S.D. L.L.C.

and

KEVIN J. KENNEDY

and

EXCEL PHYSICAL THERAPY, INC.

and

LISA A. SHORTER

Defendants

**MOTION TO DISMISS DEFENDANTS C.S.D., L.L.C.,
AND KEVIN J. KENNEDY UNDER RULE 12(b)(6)**

DEFENDANTS, C.S.D., L.L.C. and Kevin J. Kennedy, by their attorney, C.

Michael Walls, hereby moves this court to dismiss them as Defendants in this case under Federal Rules of Procedure, Rule 12(b)(6) for failure to state a claim upon which relief can be granted, for the following reasons:

FACTUAL ALLEGATIONS

The Plaintiff has alleged violations of the Federal Debt Collection Practices Act, the Maryland Consumer Debt Collection Act and Unfair and Deceptive Trade Practices

against these two Defendants. She has alleged against all defendants intentional infliction of emotional distress, harassment and fraud. Additional allegations have been made against Defendants, Excel Physical Therapy, Inc. and Lisa A. Shorter.

The allegations are based on a series of letters from the Defendant, C.S.D., L.L.C. to the Plaintiff. Those letters are attached to the Plaintiff's Amended Complaint. That Amended Complaint never alleges any individual acts on the part of the Defendant, Kevin J. Kennedy. Mr. Kennedy is the signatory on the letters from C.S.D.,L.L.C. and is identified in the letters as the Manager of Collection Services for the D.S.D.,L.L.C. defendant. By the Plaintiff's own pleadings, Mr. Kennedy is nothing more than an employee or, at best, an officer of the Defendant, C.S.D., L.L.C.

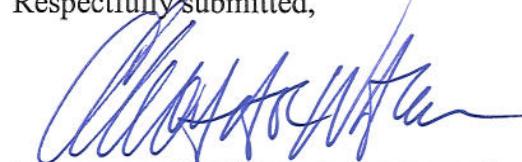
LEGAL ARGUMENT

- A. The Defendants, C.S.D., L.L.C. and Kevin J. Kennedy, hereby adopt and incorporate herein by reference the allegations, arguments and claims for relief made in the Motion to Dismiss Defendants Excel Physical Therapy, Inc. and Lisa A. Shorter for Failure to State a Claim Upon Which Relief Can be Granted as they may pertain to them.
- B. The Defendant, Kevin J. Kennedy, is not individually liable to the Plaintiff for his conduct as an employee or officer acting within the scope of his employment and/or duties of the Defendant, C.S.D., L.L.C. Plaintiff has not alleged any basis for Mr. Kennedy's personal liability in the Amended Complaint.

In *Pettit v. Retrieval Masters Creditors Bureau*, 211 F.3d 1057 (7th Cir. 2000), the court clearly stated that individuals, such as Mr. Kennedy, “. . . do not become “debt collectors” simply by working for or owning stock in debt collections companies. . . .” at 1059. The Fair Debt Collection Practices Act uses the principal of vicarious liability. *Id.*, citing *Waddington v. Credit Acceptance Corp.*, 76 F.3d 103, 108 (6th Cir. 1996). The court went on to say that individuals who do not otherwise meet the definition of “debt collector” under the Act cannot be held liable and actions brought against such individuals are frivolous and might well warrant imposition of sanctions. *Pettit* at 1059, citing *White v. Goodman*, 200 F.3rd 1016, 1019 (7th Cir. 2000).

WHEREFORE, for the reasons stated herein, the Defendants, C.S.D, L.L.C. and Kevin J. Kennedy, hereby requests that this court grant this Motion to Dismiss.

Respectfully submitted,



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CERTIFICATE OF SERVICE

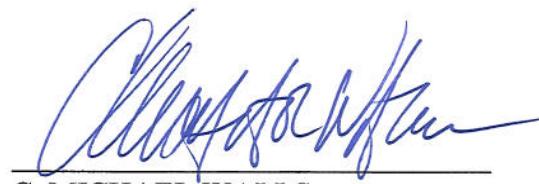
I hereby certify that on this 6th day of March, 2009, that I mailed first class, postage prepaid, a copy of the foregoing Motion to Dismiss to:

Charles H. Bogino

Attorney for Plaintiff
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And

Kevin M. Tracy and
Gregory R. Hislop
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And Lisa A. Shorter
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C. MICHAEL WALLS